

211 CMR 78.00: PROCEDURES CONCERNING RATE FILINGS AND THE CONDUCT OF HEARINGS FOR MOTOR VEHICLE INSURANCE

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78.01: Authority

211 CMR 78.00 is promulgated in accordance with the authority granted to the Commissioner of Insurance by M.G.L. c. 175E, § 10.

78.02: Definitions

As used in 211 CMR 78.00, the following words shall mean:

Advisory Filing. Any recommendations, including supporting information or commentary, concerning a Rate Filing, or any portion thereof, made pursuant to 211 CMR 78.00.

Commissioner. The Commissioner of Insurance, appointed pursuant to M.G.L. c. 26, § 6.

Division. The Division of Insurance within the Department of Banking and Insurance.

Insurer. Any corporation, association, partnership, group or individual authorized to write Motor Vehicle Insurance in the Commonwealth.

Interested Party. Any person, agency or organization which has been granted permission to appear and present testimony at a hearing or which has exercised a statutory right to do so.

Motor Vehicle Insurance. Motor vehicle policies or bonds, both as defined in M.G.L. c. 90, §§ 34A, 34O and M.G.L. c. 175, §§ 113A, 113C, 113L.

Oral Statement. A statement of position made during a hearing, with the permission of the Presiding Officer, by any person who is not a party.

Presiding Officer. Any person designated by the Commissioner to conduct hearings and procedures incident thereto and to render findings, rulings and decisions thereon. If, at any stage of the proceedings, a Presiding Officer has not been designated, the Commissioner shall be the Presiding Officer.

Rate Filings. Modifications of Motor Vehicle Insurance rates, premium charges, and classifications of risks previously filed and desired by an Insurer or Rating Organization to become effective and submitted in accordance with M.G.L. c. 175E, § 7 on forms prescribed by the Commissioner; provided that the initial Rate Filing shall include every manual of the classifications, rules and rates, and rating plans of the filing party, in such form as is acceptable to the Commissioner.

Rating Organization. A rating organization duly licensed under M.G.L. c. 175A.

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Statutory Intervenor. Any person, agency or organization, including, but not limited to, the Attorney General and the Massachusetts Consumers' Council, which has a statutory right to appear as an Interested Party in any hearing conducted pursuant to 211 CMR 78.00.

78.03: Purpose and Scope

211 CMR 78.00 shall govern the form and content of Rate Filings and Advisory Filings, procedures relating thereto, and the conduct of hearings pursuant to M.G.L. c. 175E, § 7.

78.04: Rate Filings

(1) Prior Rulings. All Rate Filings shall be made in accordance with any rulings established by the Commissioner in prior hearings which pertained to Motor Vehicle Insurance or in decisions pursuant to such hearings.

(2) Time for Filing. Any Insurer or Rating Organization desiring to modify its manual of classifications, rules and rates, or rating plans shall submit its Rate Filing to the Commissioner no less than 45 days prior to the effective date thereof. Such Insurer or Rating Organization shall submit, concurrently with such Rate Filing, three copies thereof to the Commissioner and one copy thereof to the Attorney General, unless otherwise directed by the Commissioner.

(3) Forms. All Rate Filings shall be submitted on forms prescribed by the Commissioner.

(4) Supporting Information. The Commissioner may require any Insurer or Rating Organization to furnish the information upon which it supports its Rate Filing.

(5) Copy Available for Inspection. A copy of each Rate Filing shall be available for inspection during normal business hours at the office of the Division for at least ninety days subsequent to its submission.

(6) Changes in Rate Filings. No Insurer or Rating Organization shall make any additions to, amendments to, or corrections of its Rate Filing, or any portion thereof, unless the Commissioner or Presiding Officer requests particular additions, amendments or corrections or unless an addition or amendment is made in rebuttal to an Advisory Filing or pursuant to 211 CMR 78.09(8).

(7) Rejection of Rate Filings. The Commissioner may reject any Rate Filing if he determines that the filing party has not complied with the procedures and forms prescribed by 211 CMR 78.04. An Insurer or Rating Organization whose Rate Filing has been rejected pursuant to 211 CMR 78.04(7) may re-submit such Rate Filing with appropriate modifications.

(8) Consolidation of Rate Filings for Purposes of Hearing. If the Commissioner determines that two or more Insurers or Rating Organizations have submitted Rate Filings which are similar in scope, he may, in his discretion, consolidate such Rate Filings for the purposes of hearing.

78.05: Initiation of a Hearing

(1) Discretion of the Commissioner. At any time prior to the effective date of a Rate Filing the Commissioner may, in his discretion, initiate a hearing on such Rate Filing.

(2) Motion of the Attorney General. At any time prior to the effective date of a Rate Filing, the Commissioner shall initiate a hearing on such Rate Filing if he receives from the Attorney General a motion in writing to do so.

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(3) Request by Agent or Broker. At any time prior to the effective date of a Rate Filing involving a rate adjustment, the Commissioner shall initiate a hearing if, no less than 20 days prior to the effective date, he receives a written request to do so from any agent or broker of the Insurer to which such Rate Filing is applicable or from any association representing insurance agents or brokers; provided that such Rate Filing depends upon a change in the relationship between the proposed rates and the anticipated production expense portion thereof from the relationship anticipated under any rates previously filed and currently in effect for the Insurer or Rating Organization involved; provided further that any such request is in good faith and states reasonable grounds.

(4) Request by an Insurer or Rating Organization. At any time prior to the effective date of a Rate Filing, the Commissioner shall initiate a hearing on such Rate Filing, if, no less than 20 days prior to the effective date, he receives a written request to do so from the Insurer or Rating Organization which submitted the Rate Filing; provided that, in the discretion of the Commissioner, there may be no hearing on a Rate Filing under 211 CMR 78.05(4), if, at any time prior to its effective date, the Commissioner approves such Rate Filing.

(5) Suspension of Operation of Rate Filings. The Commissioner may suspend the operation of a Rate Filing for not more than 45 days after its effective date in order to complete the hearing and make a decision thereon. No more than seven days following the suspension of a Rate Filing, an Insurer may put that Rate Filing into effect on its effective date upon furnishing the Commissioner with a written agreement, secured by a sufficient bond satisfactory to the Commissioner, to adjust the premiums affected by that Rate Filing from their respective effective dates so as to comply with the final determination of the Commissioner. No Rate Filing which has been disapproved by the Commissioner shall be effective following such disapproval.

(6) Notice of Hearing. No less than 15 days prior to the scheduled date of a hearing, the Commissioner shall cause notice of that hearing to be given by advertising the date thereof in at least one newspaper printed in the Commonwealth. Concurrently with such notice, the Commissioner shall cause notice of the hearing to be given to the Insurer or Rating Organization which submitted the Rate Filing, to the Attorney General, to the Massachusetts Consumers' Council, and to any person who has filed a written request for notice in accordance with 211 CMR 16.08. Each notice shall contain:

- (a) a statement of the date, time and location of the hearing;
- (b) a statement of the subjects and issues involved in the hearing;
- (c) a statement indicating whether or not the operation of the Rate Filing has been suspended in accordance with 211 CMR 78.05(5); and
- (d) a statement of procedures for appearing at the hearing.

78.06: Pre-Hearing Procedures

(1) The Attorney General. Concurrently with a motion for a hearing made in accordance with 211 CMR 78.05(2) the Attorney General shall submit his Advisory Filing to the Commissioner, together with three copies thereof, and one copy thereof to the Insurer or Rating Organization which submitted the Rate Filing under consideration, unless otherwise directed by the Commissioner.

(2) Statutory Intervenors. No more than ten days following notice of a hearing in accordance with 211 CMR 78.05(6), a Statutory Intervenor may submit to the Presiding Officer a notice of intent to appear as an Interested Party. Concurrently with such notice, a Statutory Intervenor shall submit its Advisory Filing to the Presiding Officer, together with three copies thereof, and one copy thereof to the Insurer or Rating Organization which submitted the Rate Filing under consideration, unless otherwise directed by the Presiding Officer.

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(3) Petition for Leave to Participate as an Interested Party. No more than four days following notice of a hearing in accordance with 211 CMR 78.05(6), any person, agency or organization that wishes to appear and present testimony at the hearing, other than the Attorney General, Statutory Intervenor or the Insurer or Rating Organization which submitted the Rate Filing under consideration, may submit to the Presiding Officer a petition for leave to participate as an Interested Party together with his grounds therefor. No more than three days following receipt of such petition, the Presiding Officer shall notify each petitioner whether his petition has been granted or denied. If it has been granted, the petitioner shall, no more than four days following receipt of such notice, submit to the Presiding Officer his Advisory Filing, together with three copies thereof, and one copy thereof to the Insurer or Rating Organization which submitted the Rate Filing under consideration, unless otherwise directed by the Presiding Officer.

(4) Request for Permission to Make an Oral Statement. No more than three days following notice of a hearing in accordance with 211 CMR 78.05(6), any person, agency or organization which has not submitted a petition for leave to participate as an Interested Party may submit a written request to the Presiding Officer for permission to make an Oral Statement. If a petition for leave to participate as an Interested Party submitted by any person, agency or organization has been denied, such person, agency or organization may, no more than three days following such denial, submit a written request to the Presiding Officer for permission to make an Oral Statement. No more than three days following receipt of any request made pursuant to 211 CMR 78.06(4), the Presiding Officer shall notify such person, agency or organization whether his request has been granted or denied.

(5) The Division. No less than three days prior to the scheduled date of a hearing, the Division shall submit its Advisory Filing to the Presiding Officer.

(6) Notice of Appointment of Counsel. Any party which will be represented at a hearing by counsel shall submit, concurrently with its Advisory Filing, a notice of appointment of counsel, which notice shall contain the name, address and telephone number of counsel. Any notice required to be given to a party pursuant to 211 CMR 78.00 shall be given to the counsel named in such party's notice of appointment of counsel.

78.07: Advisory Filings

(1) Form of Advisory Filings. The Commissioner may prescribe the form of Advisory Filings and may make changes in the form from time to time as he may consider proper, expedient or necessary, provided that such form shall not require detailed actuarial justification.

(2) Changes in Advisory Filings. No party shall make any additions to, amendments to, or corrections of its Advisory Filing, or any portion thereof, unless the Presiding Officer requests such additions, amendments or corrections or unless an addition or amendment is made pursuant to 211 CMR 78.09.

(3) Copy Available for Inspection. A copy of each Advisory Filing shall be available for inspection during normal business hours at the office of the Division for at least 90 days subsequent to its submission.

(4) Consolidation of Appearances. If the Presiding Officer determines that two or more petitioners have submitted Advisory Filings which are similar in scope, he may, in his discretion, require those petitioners to consolidate their appearances.

(5) Rejection of Advisory Filings. The Presiding Officer may reject any Advisory Filing if he determines that the filing party has not complied with the procedures and forms prescribed by 211 CMR 78.06 and 78.07. If the Presiding Officer determines that the material presented in an Advisory Filing is irrelevant, immaterial or insufficient, he may reject such Advisory Filing or require the filing party to submit particular additional information.

78.08: Pre-Hearing Proceedings

(1) Pre-Hearing Conference. No less than three days prior to the scheduled date of a hearing, the Presiding Officer may hold a prehearing conference for the resolution or simplification of issues.

(2) Submission of Lists of Witnesses. No less than three days prior to the scheduled date of the hearing, each party shall submit to the Presiding Officer a list of witnesses which it intends to call to testify. This list shall include the occupation and qualifications of each witness, a statement of the subject matter upon which each witness will testify, and the approximate amount of time required for such testimony. The Presiding Officer may, in his discretion, determine the order of presentation of testimony.

78.09: Conduct of the Hearing

(1) Hearing Docket. The Division shall maintain a hearing docket and assign a number to each hearing. The Division shall enter in such docket all documents relating to each proceeding to which 211 CMR 78.00 applies.

(2) Ex Parte Communications. From the commencement of a hearing subject to 211 CMR 78.00 until the rendering of a final decision, no person who is not employed by the Division shall communicate *ex parte* with the Commissioner or Presiding Officer with respect to the merits of that proceeding; provided that a request for a report concerning the status of a proceeding or an inquiry as to the Division's practice or procedure shall not be prohibited by 211 CMR 78.09. If the Presiding Officer determines that a party or his agent has violated 211 CMR 78.00, he may exclude such party from the hearing or decide against him with prejudice. If the Presiding officer determines that a person not a party has violated this rule, he may exclude that person from the hearing.

(3) Oral Statements. The Presiding Officer may specify the amount of time allowed to any speaker for his Oral Statement. Although Oral Statements will generally be heard at the commencement of a hearing, the Presiding Officer may, in his discretion grant permission to any person to make an Oral Statement at any time during a hearing. If he determines that an Oral Statement is irrelevant, immaterial or unduly repetitious, he may restrict the time allowed to a speaker. Persons making Oral Statements shall not be sworn as witnesses and no record of their Oral Statements shall be included in the transcript of the hearing.

(4) Motions. The Presiding Officer may make rulings regarding the admissibility of evidence or any other matter which may arise during a hearing. Any party making application to the Presiding Officer for a ruling shall do so by motion which shall state the ruling sought and the grounds therefor. The Presiding Officer may require that a motion be presented in writing. The Presiding Officer may, in his discretion, hear oral argument on a motion prior to make a decision thereon.

(5) Objections to Rulings. At the time that the Presiding Officer makes a ruling, any party may make known his objection to the ruling and his grounds therefor; provided that if a party has no opportunity to object to a ruling at the time it is made, such party may, within three days of the ruling, state in writing his objection and his grounds therefor.

(6) Official Notice. The Presiding Officer may take official notice of any fact which may be judicially noticed by the courts of this Commonwealth, and in addition, may take official notice of general, technical or scientific facts within his specialized knowledge; provided that the Presiding Officer shall notify all parties of the material so noticed, and provided further that any party, upon timely request, be afforded an opportunity to contest the facts so noticed. The Presiding Officer may utilize his technical experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to him.

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(7) Evidence. The Presiding Officer need not observe the rules of evidence observed by the courts of the United States or of this Commonwealth, but shall observe the rules of privilege recognized by Massachusetts law. Evidence may be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. The Presiding Officer may exclude testimony or evidence which he determines to be unduly repetitious or to have an unreasonably dilatory effect upon the hearing process. All evidence, including any records, investigation reports and documents in the possession of the Division of which the Presiding Officer desires to avail himself in making a decision, shall be offered and made a part of the record in the proceeding, and no other factual information or evidence shall be considered except as provided in 211 CMR 78.09(6). Documentary evidence may be received in evidence in the form of copies or excerpts, or by incorporation by reference.

(8) Cross-Examination and Rebuttal Evidence. Every party shall have the right to call and examine witnesses, to cross-examine witnesses, and to submit rebuttal evidence in denial of an affirmative fact which an adverse party has endeavored to prove.

(9) Additional Evidence. Except in the discretion of the Presiding Officer, material not contained in Rate Filings or Advisory Filings or submitted in rebuttal pursuant to 211 CMR 78.09(8) shall not be admitted into evidence.

(10) Offers of Proof. Any offer of proof made in connection with an objection to a ruling by the Presiding Officer rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence which the party making such offer contends would be adduced by the testimony; and if the rejected or excluded evidence consists of documents or records, or of references to documents or records, a copy of such documents, records or references shall be marked for identification and shall constitute the offer of proof.

(11) Stipulations. At any stage of the hearing, the parties may, either orally or in writing, stipulate to any pertinent facts. In making his findings, the Presiding Officer need not be bound by any such stipulation.

(12) Oral Argument. The Presiding Officer may, either on his own motion or on the motion of any party, allow and designate time for the presentation of oral argument. The Presiding Officer shall consider the following factors: the complexity or importance of the issues, the public interest to be served, and the availability of time.

(13) Conduct of Persons Present. All parties, counsel, witnesses and other persons present at a hearing shall conduct themselves in a manner consistent with the standards of decorum commonly observed in the courts of the Commonwealth. Where such standards are not observed, the Presiding Officer may take such action as he deems appropriate to maintain order, including the exclusion of any disorderly person from the hearing. If the person so excluded is a party or his agent, the Presiding Officer may decide against such party with prejudice.

(14) Transcripts. All proceedings in a hearing shall be officially recorded and transcribed by a reporter appointed by the Presiding Officer. Insurers and Rating Organizations which are parties shall pay the cost of the reporter's fees, together with the cost of providing the Division with two copies of the transcript and each Statutory Intervenor with one copy thereof. Other parties may obtain copies of the transcript from the reporter at cost.

78.10: Briefs

A party may submit a brief to the Presiding Officer within such time as the Presiding Officer shall specify. A party who desires additional time in which to file a brief may request an extension by written motion within the period specified. Each party who files a brief shall submit two copies thereof to the Presiding Officer except where a different number is permitted or directed by the Presiding Officer. Each brief filed in accordance with 211 CMR 78.10 shall contain:

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- (a) a concise statement of the case;
- (b) a summary of arguments with supporting evidence; and
- (c) requested findings of fact and rulings.

78.11: Decisions

The decision of the Presiding officer shall be in writing or stated in the record. It shall be accompanied by a statement of reasons therefor, including determination of each issue of fact or law necessary to the decision. The Presiding Officer shall notify all parties of the decision, of their right to appeal the decision, and of the time within which such right may be enforced. If the Presiding Officer is a person other than the Commissioner, he shall file the decision with the office of the Commissioner.

78.12: Appeals

(1) Appeal of Decisions Where the Presiding Officer Is a Person Other than the Commissioner.

Any person aggrieved by any finding, ruling or decision rendered upon a hearing held before a Presiding Officer other than the Commissioner may, within three days after the filing of such finding, ruling or decision with the office of the Commissioner, appeal therefrom to the Commissioner, who shall review the case and who may modify, affirm or reverse such finding, ruling or decision.

(2) Review by the Commissioner. Upon the docketing of an appeal, the Commissioner shall set a date for the filing by the aggrieved party of a brief which shall state the grounds for the appeal and the remedy requested. The failure to file a brief within the time allotted shall be considered a waiver of the right to appeal. The Commissioner shall notify all other parties of the filing of an appeal and of the date upon which the appellant's brief is to be submitted. The Commissioner shall give other parties an opportunity to submit briefs by designating a date therefor. Notwithstanding the preceding sentence, if the Commissioner determines, following a review of the record, that the appeal is without substantial merit, he may dispose of such appeal without requesting briefs from the other parties. Prior to making any decision, the Commissioner may, in his discretion, request all parties to attend a conference to review and discuss the appeal.

REGULATORY AUTHORITY

211 CMR 78.00: M.G.L. c. 175E, § 10.

NON-TEXT PAGE